April 26, 2021

Honorable Maggie Hassan
324 Hart Senate Office Building
Washington, DC 20510

Honorable Bob Casey
393 Russell Senate Office Building
Washington, DC 20510

Honorable Sherrod Brown
503 Hart Senate Office Bldg.
Washington, DC 20510

Honorable Debbie Dingell
116 Cannon House Office Building
Washington, DC 20515

RE: Home and Community-Based Services Access Act of 2021

Dear Senator Hassan, Senator Brown, Senator Casey and Congresswoman Dingell:

Thank you for your work on the discussion draft of the Home and Community-Based Services Access Act of 2021 and the opportunity to submit comments. As you highlighted in your March 16, 2021 memo to stakeholders, the current home and community-based services (HCBS) system that exists through Medicaid HCBS waivers is an artifact of a law that "never envisioned community-based supports for older adults and people with disabilities." We know all too well that the resulting patchwork of regulations means that "too many people cannot access the care they need in their homes and communities even though these are the environments where most people prefer to receive care."

The Home Care Association of America (HCAOA) represents nearly 4,000 home care organizations that employ and supervise direct care workers who provide personal care and specialty nursing services in the homes of millions of older Americans, individuals with disabilities, and children with special medical needs, enabling them to be close to family and friends while remaining as independent as possible.

We applaud your undertaking and offer our industry's recommendations to support your two overarching goals: (1) increasing access to quality care, and (2) supporting a robust home care workforce.

RECOMMENDATIONS TO IMPROVE ACCESS TO HCBS

Adopt national guidelines for timely access to HCBS by establishing national core policies and procedures that include presumptive eligibility and emergency authorization if a consumer is determined to be at risk of institutional placement. Each state's HCBS waivers, and Medicaid in general, are highly unique and have been cobbled together over time. As a condition of the enhanced FMAP proposed in the legislation, states must come into compliance with the four Access to Quality Care outcomes listed below within two calendar years following passage:

- **Eliminate waiting lists for HCBS.** The implicit assumption set out by the creation of an HCBS Waiting List is that these life-sustaining and life-enriching services are optional. While consumers wait on these lists they drive health care costs throughout other parts of the system, including but not limited to increased emergency room and hospital utilization, increased adverse events such as falls and excess weight loss, and lastly nursing home

placements. Elimination of all waiting lists is a critical component of the elimination of the institutional bias that still exists.

- **Ensure timely access through equitable eligibility.** In all states, the financial qualifications for Medicaid in a nursing home are different than those for HCBS services. These differences in financial eligibility not only illuminate the standing institutional bias towards nursing facility placement, they also cost the system billions annually. The average HCBS participant costs Medicaid approximately 50% less than the cost of the average nursing home consumer. Making financial eligibility more difficult for HCBS consumers makes no economic sense for our long-term care and Medicaid systems. Because of this, we recommend that states be required to create parity between the financial eligibility in HCBS and nursing homes in the following categories:

    - **Income limits and income "spend down"** – Currently, most states utilize a hard income cap for HCBS waiver qualification (i.e. 300% of the Federal Poverty Level) to qualify for HCBS waiver services, while nursing homes have no income cap and are also able "to spend down" the consumers' incomes. We recommend utilizing the nursing home income eligibility rules for all HCBS services.
    - **Asset test** – Currently there are spousal impoverishment and estate planning rules that make it substantially advantageous for consumers to move into nursing homes and access Medicaid quickly. We recommend utilizing the nursing home income eligibility rules for all HCBS services.
    - **Presumptive Eligibility/Deemed Eligibility** – Currently nursing home providers are able to perform their own financial evaluation on a potential consumer and "presume them to be eligible" for Medicaid. This allows a nursing home provider to begin providing services immediately because they receive the assurance that if the consumer is in fact eligible for Medicaid services, they will be retroactively reimbursed to the day of admission. However, HCBS providers are not able to presume eligibility, and they are expressly restricted from receiving retroactive reimbursement for services, leaving the consumer to wait for 90 days or more for eligibility determination. Many consumers are not able to wait – and none should have to wait – for these vital services. This disparity in presumptive eligibility and retroactive payment for services drives many consumers to nursing homes and drives many of the system costs outlined above.
    - **Ensure authorization of services**. Focus should be on consumer access to home care. Currently, even after eligibility determination, it can take 30 to 60 days to assess, create, and approve a person-centered care plan in the home. But if a consumer moves into a nursing home they are "safe" the same day they move in. By utilizing this Act to bolster consumer access, we can help ensure that consumers are placed in their own homes with proper nursing and caregiving services, where they overwhelmingly prefer to be. We recommend this legislation establish guidelines for authorization of services to ensure both the safety of the consumers and equitable access to services by ensuring that every qualifying consumer can begin personal care services within five calendar days and all other HCBS services within 30 calendar days. States also should have an emergency authorization process that allows a

consumer to access personal care services and/or attendant care services within 24 hours of eligibility approval.

Promote consumer choice to transition to HCBS: Another way to increase care in the community is by changing the administration of MDS Section Q surveys – a process that, if followed correctly, gives a consumer a direct voice in expressing preference and gives the facility a means to assist residents in transitioning to the most integrated setting. Unfortunately, the U.S. Department of Health and Human Services, Office for Civil Rights office (OCR) has found that the requirements of Section Q of the MDS can often be misinterpreted, and can unintentionally prevent residents from learning about opportunities to transition from a facility into the most integrated setting. We ask that the legislation look into recommendations that facilities can take to ensure Section Q of the MDS is properly used to facilitate the state's compliance with Section 504 and to promote access to home and community-based services. Our organization recommends requiring that long-term care facilities have an established relationship with a HCBS skilled nursing provider and home care provider to address social determinants of health to help discuss referrals and ensure that patients do not experience a lapse in care during their transition from the facility to the home. We also recommend that states be required to conduct Section Q, or an equivalent survey, by a party free of conflict such as an MCO case manager, an ombudsman, an Area Agency on Aging (AAA), or a Title 6 Centers for Independent Living (AAA/CIL) advocate.

Develop national performance metrics for HCBS. Currently, our association has a work group focused on developing performance metrics for home care organizations. The goal is to 1) quantify the value of delivering personal care with documented positive outcomes, and 2) reducing cost of care. Metrics being considered include falls, hospitalizations, consumer and client satisfaction. Because reporting requirements and the scope of practice for the direct care workforce vary significantly from state to state, HCAOA would be pleased to collaborate with you to update HCBS standards of care delivered by caregivers employed directly by consumers and by those employed by home care agencies. Adequately measuring these outcomes in the community and moving from a fee-for-service model to a value-based model will lead to greater investment in the recruitment, training, and compensation of the direct care workforce.

Set national standards for Medicaid private duty nursing (PDN) services. Unfortunately, many children with complex medical needs are either not receiving enough PDN services in the home or not able to access these services due to a lack of available nurses – both stemming from a lack of state investment in HCBS. Surprisingly, there are no federal regulations presiding over PDN services, so each state is able to offer and deny services as they see fit, which often leads to confusion with PDN nurses, low reimbursement rates, and burdensome administrative requirements that do not promote clinical care. The following are ways to improve this service:

- Establish PDN services as a separate type of home health care with national standards and performance metrics that would allow children and adults to stay in their homes rather than in ICUs and PICUs where their quality of life is severely diminished and where their care is much more expensive.
- Allow for certification of a Plan of Care for medically stable clients as defined by a physician to re-certify their Plan of Care every 6 months instead of every 2 months.

Expand state-specific HCBS education so that citizens and health care professionals are aware of HCBS and the goal of providing care and support in the least restrictive environment that enables individuals to remain at home living as independently as possible. Currently, physicians must certify that an individual is NFCE (nursing facility clinically eligible) in order to be eligible for HCBS. Frequently they lack a thorough understanding of HCBS policies and are unaware of the expertise and abilities of direct care workers who provide this lifeline.

Ensure sustainability of Medicaid financing. Appropriate funding for HCBS continues to be a challenge in state Medicaid programs. HCAOA hopes that establishing HCBS as a mandatory benefit will end funding fluctuations, which leaves Medicaid consumers and providers vulnerable to reduced hours and reimbursement cuts.

RECOMMENDATIONS TO SUPPORT THE HOME CARE WORKFORCE

Increase Medicaid reimbursement for HCBS to enable home care agencies to offer competitive wages and benefits that are commensurate with states' minimum wage increases. Meager rate increases in several states over the past few years only partly offset the increasing costs to deliver home care. The funding was neither proportionate to the mandated wage increase nor adequate to support ongoing services. Given the economic challenges created by the pandemic and increases in minimum wage, many providers have been and will be forced to close their agencies, jeopardizing clients and increasing costs for states.

Establish guidelines for Medicaid programs to provide full-time work for DCWs. In a recent survey by *myCNAjobs,* 42 percent of DCWs indicated that they want more hours and would prefer to work for just one home care organization that has a culture of "caring." We recommend adopting principles to establish quality jobs with adequate Medicaid funding for DCWs, including quality training, living wages, trained supervisors, respect and recognition, as outlined by *PHI International.*

Enhance training requirements of DCWs that focus on consumer conditions including dementia, diabetes, and congestive heart failure to improve care and support. We support states setting goals that promote upskilling of DCWs with appropriate funding to reward workers who have completed training. HCAOA is currently working with our partner *CareAcademy* to offer college credits for DCW training at Southern New Hampshire University.

Develop a training grant program that entities including home care organizations and other related associations can apply for to provide training to direct care workers. In a recent survey by myCNAjobs, nearly 40 percent of DCWs reported that their primary goal over the next year is to gain more skills through educational offerings. In another survey by Home Care Pulse, nearly 65 percent of home care organizations contracted with professional training companies to provide education for their frontline workers. We also recommend making training expenses eligible for a 100% FMAP (Federal Medical Assistance Percentage) match with specific eligibility guidelines to states to qualify for this reimbursement.

Require states to establish an HCBS Sub-Committee of each state's mandated Medical Assistance Advisory Committee to focus on access, eligibility, DCWs, consumer rights and HCBS effectiveness and includes a variety of stakeholders – providers, consumers, and regulators.

The Home and Community-Based Services Access Act of 2021 is a paradigm shift for this country's Medicaid program and represents a first step in modernizing the Medicaid program to accommodate our country's care and support of our growing elderly population. In addition to these needed Medicaid reforms, we must address the population that does not qualify for Medicaid benefits yet do not have the resources to pay for services. Additionally, HCAOA has been a staunch advocate for utilizing the tax code in a bipartisan manner to provide relief for family caregivers through both the Homecare for Seniors Act and the Credit for Caring Act, which would both help offset the costs of caring for a loved one.

Finally, the proposed legislation includes the establishment of an advisory panel to guide several aspects of the bill. As a national trade association representing providers of HCBS, we recommend that a provider member of the Home Care Association of America be appointed to the advisory panel to give a voice to the thousands of HCBS providers who participate in the Medicaid program. HCAOA stands ready to work with you in molding this legislation that focuses on expanding access to Medicaid HCBS and building a robust workforce to deliver this critical care and support.

Thank you for your consideration. We look forward to working with you during this critical time. If you would like additional information, please contact me at vicki@hcaoa.org or at 202-519-2961.

Sincerely,

Vicki Hoak
Executive Director